

1 THE HONORABLE THOMAS S. ZILLY
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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT SEATTLE**

11 tinyBuild LLC,

12 Plaintiff/Counterclaim Defendant,

13 v.

14 Nival International Limited

15 Defendant/Counterclaim Plaintiff.

16 Case No.: 19-cv-00805-TSZ

17 **DEFENDANT'S MOTION FOR**
PROTECTIVE ORDER

18 **Noted for Consideration:**
October 11, 2019

19 Defendant/Counterclaim Plaintiff Nival International Limited (“Nival”), by
20 and through its undersigned counsel, hereby move this honorable court for the
21 entry of a protective order in the form attached hereto as Exhibit A to protect the
22 confidential, sensitive, proprietary and/or trade secret information and documents
23 of Nival as disclosed in the course of this litigation.

24 A protective order is necessary to protect Nival because
25 Plaintiff/Counterclaim Defendant tinyBuild LLC (“tinyBuild”) has, in the course
26 of discovery, requested from Nival its confidential, sensitive, proprietary and/or
27 trade secret information and documents. Nival’s concern as to disclosing this

1 information and documents is propounded because tinyBuild and Nival are
2 competitors of one another as both are game developers (though they have also
3 worked together in the past). tinyBuild has propounded interrogatories and
4 document requests that, though inappropriate for other reasons, if required to be
5 responded to would result in the disclosure of Nival's personnel lists (including
6 contact information for its employees), source code, internal business practices,
7 non-public financial information, customer lists, internal business information, and
8 development methods.

9 Though much of the requested information is wholly irrelevant to the dispute
10 between the parties, it is apparent that tinyBuild has requested this information so
11 as to gain access to Nival's internal and proprietary and confidential information so
12 that it can improperly compete with Nival and solicit Nival's personnel.

13 To the extent any of this information or documents are to be produced by
14 Nival, Nival requests that this court enter bi-lateral and two-leveled protective
15 order that permits documents to be marked Confidential or Attorneys' Eyes Only.

16 On September 9, 2019, Attorney Valentin Gurvits for Nival and Diana
17 Breaux for tinyBuild met and conferred telephonically as to stipulating to a
18 protective order to be entered into the case, but could not reach an agreement.

19 On September 24, 2019, Nival sent tinyBuild a proposed protective order in
20 the form attached hereto as Exhibit B, which shows the substantive modifications
21 to the model protective order made available by this court (consisting of
22 identifying the documents and information that may be considered Confidential
23 and allowing for documents to be marked Attorneys' Eyes Only).

24 tinyBuild's counsel did not agree to the proposed protective order, and
25 instead provided an alternative, which is attached hereto as Exhibit C, which is
26 marked against Exhibit B. The main areas of dispute between the parties are the

1 categories of documents and information that may be marked confidential and
2 whether any documents or information may be marked as Attorneys' Eyes Only.

3 tinyBuild's proposed protective order fails to take into consideration the fact
4 that tinyBuild and Nival are competitors and that the information that tinyBuild
5 seeks to obtain from Nival could be used by tinyBuild to solicit Nival's employees,
6 learn Nival's internal business processes, learn Nival's other customers and
7 associates which it could use to solicit them and interfere with them, and learn
8 Nival's internal finances and staffing policies. tinyBuild's proposal seeks to
9 prohibit protection to much of these categories, and permits tinyBuild access to all
10 of them. These disclosures would result in significant damage to Nival and its
11 business.

12 Accordingly, Nival respectfully requests that this honorable Court enter a
13 protective order in the form attached hereto as Exhibit A.

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28 Motion for Protective Order

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825 Beacon Street, Suite 20, Newton MA 02459
617-928-1800

1 Respectfully submitted,
2 Nival International Limited,
2 By its Attorneys,

3 /s/ Valentin Gurvits
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18 Dated: September 27, 2019

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Certificate of Service

I hereby certify on the date indicated below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties who have appeared in this matter.

Dated: September 27, 2019 /s/ Philip P. Mann

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